



**US Army Corps
of Engineers®**

LOS ANGELES DISTRICT

SPECIAL PUBLIC NOTICE REGIONAL GENERAL PERMIT

**Regional General Permit (RGP) No. 41
Removal of Invasive, Exotic Plants**

Public Notice/Application No.: 200301094-JMB

Date: December 10, 2003

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TO WHOM IT MAY CONCERN:

The District Engineer, Los Angeles District Corps of Engineers has re-issued Regional General Permit (RGP) No. 41, which authorizes the mechanized removal of invasive, exotic plants (exotics) from waters of the U.S including wetlands within the portions of California in the Los Angeles District of the Corps of Engineers (Los Angeles, Orange, Riverside, San Diego, San Bernardino, Imperial, Ventura, Santa Barbara, Mono, Inyo, and San Luis Obispo counties). This general permit has been issued under Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and applies to anyone wishing to remove exotics in a manner which is consistent with the terms and conditions of this RGP. A copy of the RGP is attached to the Public Notice.

RGP 41 was originally issued on August 15, 1996 for a two year trial basis. It was subsequently re-issued RGP 41 for a period of five years and expired on August 15, 2003. The Corps is hereby reissuing RGP 41 for a period of 5 years with a new expiration date on December 10, 2008.

The purpose of this RGP is to provide a mechanism for expedited approval of invasive weed removal projects, for the purpose of habitat recovery. Projects whose purpose is both habitat recovery and flood control would be eligible to use the RGP. The RGP would not be appropriate for use on projects whose sole purpose is flood control or removal of native vegetation. The RGP is not intended to be a planning tool; however, the Corps encourages people to begin invasive weed control efforts at the top of a watercourse to minimize reinfestation of previously treated areas. The Corps, in cooperation with The Nature Conservancy, has prepared a technical document on methods for control and management of giant reed (*Arundo donax*) and salt cedar (*Tamarix* spp.). This document is available upon request from the Los Angeles District of the Corps of Engineers.

Public Comment:

A Public Notice soliciting input regarding the need to modify RGP 41 prior to its re-issuance was issued on June 11, 2003 and sent to all interested parties (Corps mailing list), including appropriate state and Federal agencies. Comments were received from the following agencies/individuals:

NOAA Fisheries
Environmental Protection Agency
U.S. Fish and Wildlife Service
California Department of Fish and Game
City of San Diego
California Native Plant Society (San Diego and Los Angeles-Santa Monica Mountain Chapters)
Kelly & Associates
Pestmaster Services, Inc.

Consideration of Comments:

~~Summary of modifications to originally proposed RGP based on public comment~~

1. The following plants are being added to the list of species covered under the RGP:

Italian thistle – *Carduus pycnocephalus*
milk thistle – *Silybum marianum*
Tocalote – *Centaurea melitensis*
thistle - *Cirsium arvense and vulgare only*
bristly Ox-Tongue – *Picris echioides*
eucalyptus – *Eucalyptus spp.*
evergreen ash – *Fraxinus udhei*
bottle brush – *Callistemon citrinus*
California (Peruvian) pepper – *Schinus molle*
carrotwood – *Cupaniopsis anacardiodes*
Chinese elm – *Ulmus parvifolia*
oleander – *Nerium oleander*
Mexican fan palm – *Washingtonia robusta*
Canary Island date palm – *Phoenix canariensis*
Geraldton carnation weed – *Euphorbia terracina*
Edible fig (*Ficus carica*)
blue crown passion flower (*passiflora caerulea*)
pecan (*Carya illinoensis*)
olive (*Olea europea*)

The last four species were inadvertently not included in the 401 certification. The Corps has requested an amendment to the 401 to correct our mistake and it should be received shortly.

2. In addition, two species are being removed from the list because they are native or have a native phenotype that is difficult to distinguish from the invasive variety. These are:

Cocklebur – *Xanthium strumarium*
Common reed – *Phragmites australis*

3. *Cirsium sp.* has been eliminated and replaced with the specific names of the invasive thistles found in wetland areas.

4. Application of herbicides in any area supporting threatened and/or endangered species should be consistent with the USEPA's Office of Pesticide Programs, Endangered Species Protection Program county bulletins.

5. For projects proposing treatment with herbicide in areas supporting threatened or endangered species, the USFWS may require the submittal of an Integrated Pest Management Plan.

6. The following conditions are being added to the RGP as conditions of the Section 401 Water Quality Certification:

- a. Applicants of projects proceeding under RGP 41 shall provide a copy of the “Notification” package required by RGP 41 Condition No. 18 to the State Board and the appropriate Regional Water Quality Control Board (Regional Board). These Copies shall be mailed at the same time to:

Program Manager
401 Water Quality Certification Program
Division of Water Quality
State Water Resources Control Board
P.O Box 100
Sacramento, California 95812-0100

Program Manager
401 Water Quality Certification Program
(Address of Appropriate Regional Board)

The applicant shall provide a fee of \$60 for review and processing of the notice per CCR Title 23, section 2200. If the applicant is not contacted by the Regional Board within 30 days of the postmarked date of the notification, the applicant may assume that the project meets the conditions of this certification and may proceed with the project.

- b. Extracted Plant Material Stockpile: Extracted plant materials stockpiled at sites know to experience flash flooding outside the flood season (April 14 – November 14) shall be removed within 15 days of the initial creation of the stockpile in order to contain the potential spread of exotic, invasive plant material in such flash-flood prone areas.
- c. Other State Permits: Projects proceeding under RGP 41 shall comply with all applicable National Pollutant Discharge Elimination System permits and Waste Discharge Requirements.
- d. California Environmental Quality Act (CEQA): Projects permitted under RGP 41 shall comply with CEQA.
- e. California Endangered Species Act: The discharge shall not result in the taking of any State endangered species, threatened species, or candidate species, or the habitat of any such species unless the activity is authorized by the California Department of Fish and Game pursuant to a permit, memorandum of understanding, or other document or program in accordance with Fish and Game Code sections 2081, 2081.1, or 2086.
- f. Pollution: The discharge shall not cause pollution, contamination, or nuisance as defined in California Water Code Section 13050.
- g. Cumulative Impact: The discharge by itself or in combination with other discharges shall not have a significant cumulative effect or degrade water quality or beneficial uses.
- h. Channel Destabilization: The discharge shall not directly or indirectly destabilize the channel or bed of a receiving water.
- i. Toxic Substances: The discharge shall not include substances in concentrations toxic to human, plant, animal or aquatic life or the produce detrimental physiological responses.
- j. Hazardous Substances: The discharge shall not include waste classified as “hazardous” or

“designated” as defined in Title 22 CCRs section 66261 and California Water Code Section 13173.

~~Response to specific public comment:~~

The following agencies and individuals either expressed support for or did not object to the reissuance of RGP 41: NOAA Fisheries, Environmental Protection Agency, Kelly & Associates and Pestmaster Services, Inc.

~~California Department of Fish and Game~~

CDFG recommended that RGP 41 include a requirement to notify CDFG prior to implementation of mechanized invasive exotic removal projects. They also recommended that the following species be added to the list.

Edible fig (*Ficus carica*)
blue crown passion flower (*passiflora caerulea*)
pecan (*Carya illinoensis*)
olive (*Olea europea*)

CDFG commented that cocklebur (*Xanthium strumarium*) is a native plant and should be removed from the list. In addition, common reed (*Phragmites australis*) is considered native to the deserts of California and should not be removed unless a particular stand has been determined to be non-native. CDFG also commented that mechanical removal for perennial pepperweed and cape ivy be avoided due to their ability to rapidly re-infest from plant fragments. Finally, CDFG commented that the genus *Cirsium* includes 33 native species, of which 10 are rare, threatened or endangered. They recommended limited the RGP to *C. vulgare* and *C. arvense*.

~~Response:~~ RGP 41 contains language requiring that CDFG be notified. The four species listed above were added to the list. Currently the 401 certification does not include these species. An amendment has been requested by the Corps and should be received shortly. The two native species on the list were removed. In addition *cirsium* sp. was clarified to reflect only the exotic invasive species found in wetlands.

With regard to avoiding mechanical removal for pepperweed and cape ivy, this is best dealt with on a case by case basis. Since the Corps and CDFG will receive notification for mechanical removal action, we can ensure that appropriate methods of eradicating this species are employed.

~~U.S. Fish and Wildlife Service (FWS):~~ The FWS had concerns about broadcast applications of herbicides for exotic species control. They recommended that any pesticide use be part of a comprehensive Integrated Pest Management (IPM) program. The FWS also recommended that RGP 41 should require that application of herbicides in any area supporting threatened or endangered species be consistent with the EPA’s Office of Pesticide Program’s Endangered Species Programs county bulletins. Finally, the FWS commented that activities involving the use of aquatic pesticides may require a National Pollutant Discharge Elimination System (NPDES) permit.

~~Response:~~ This RGP has been modified to state that the activities proposed for coverage under this RGP where there may be ESA issues may be required to submit an IPM. The language regarding county bulletins requested by FWS was added to the RGP in response to the comment. Finally the 401 certification issued by the Regional Water Quality Control Board (RWQCB) includes a requirement that applicants comply with all applicable NPDES requirements.

~~City of San Diego:~~ The City commented that they supported the inclusion of the additional species. They also commented that the potential for noise impacts should be specifically considered. They recommended adding language to state “ To reduce potential impacts to migratory birds, noise

impacts on breeding behavior of native birds in adjacent parcels will be evaluated if the project occurs between March 15 – September 15.”

~~Response:~~ The Corps feels that the currently language provides for enough flexibility to allow potential noise impacts to be addressed when mechanized work is proposed during the breeding season. We agree with the City that it is important to consider the impact of noise associated with mechanized removal, but feel should be evaluated on a case by case basis.

~~California Native Plant Society, Los Angeles – Santa Monica Mountains Chapter:~~ CNPS, LA-SMM commented that the strongly support the inclusion of the additional species. They also recommended that the Geraldton carnation weed (*Euphorbia terracina*) be added to the list of species as it is posing a threat to many riparian areas in the Santa Monica Mountains. Like CDFG, they also commented expressed concern about the listing of *Cirsium* sp. on the original list. They indicated that some species from this genus are native to California. They recommended specifying the invasive varieties rather than all *cirsium* species. In addition they recommended adding other exotic thistles that are problematic in wetland areas. These are Italian thistle (*Carduus pycnocephalus*), Tocalote (*Centaurea melitensis*) and Milk thistle (*Silybum marianum*). They also recommended including Bristly Ox-Tongue (*Picris echioides*) as it can literally blanket disturbed, moist areas, outcompete native species and provide little habitat value. Finally, they commented that cocklebur (*Xanthium strumarium*) is a native plant and should be removed from the list. They also commented that common reed (*Phragmites australis*) is more problematic because invasive genotypes do exist and have invaded some areas in California. Because the native (local) genotype is not invasive, they recommended that this species be removed from the list.

Response: In response to the comments by this chapter and the San Diego chapter of the CNPS These changes were made to the RGP.

~~California Native Plant Society San Diego Chapter:~~ The SD chapter commented on the same issues as the LA-SMM chapter. They will not be repeated here.

Other Authorizations:

1. **Water quality certification:** On October 24, 2003, the State Water Resources Control Board issued a Section 401 Water Quality Certification for RGP 41, contingent upon the conditions listed in the Consideration of Comments section 6. a-j: This RGP has been slightly modified by the addition of four species since the 401 certification was issued. The Corps will seek to have the 401 Certification modified to include these additional species.
2. **Coastal zone management consistency determination:** The California Coastal Commission has concurred that the proposed RGP complies with and would be conducted in a manner which is consistent with the Coastal Zone Management Program.
3. **State and/or local authorization:** Permittees must comply with all appropriate state and local permitting requirements and fees. These may include the need for additional permits (including requirements to protect State-listed endangered species) from the California Regional Water Quality Control Board, California Coastal Commission (local coastal development permits), and California Department of Fish and Game.

In accordance with the National Environmental Policy Act, and Environmental Assessment (EA) was prepared for this Regional General Permit. The EA may be viewed at, or requested from the

Los Angeles District of the Corps of Engineers. In addition, the Material Safety Data Sheet (MSDS) for "Rodeo" brand herbicide is available, upon request, from Monsanto or from the Regulatory Branch of the Los Angeles District of the Corps of Engineers. A copy of the revised RGP is attached to this public notice. For more information, contact Jeannette M. Baker at (858) 672-3240.